

**BEFORE THE
EMPLOYMENT APPEAL BOARD
Lucas State Office Building
Fourth floor
Des Moines, Iowa 50319**

ERNIE M ABELL

Claimant,

and

RK FUELS INC

Employer.

:
:
:
:
:
:
:
:
:
:
:

HEARING NUMBER: 12B-UI-00221

**EMPLOYMENT APPEAL BOARD
DECISION**

NOTICE

THIS DECISION BECOMES FINAL unless (1) a **request for a REHEARING** is filed with the Employment Appeal Board within **20 days** of the date of the Board's decision or, (2) a **PETITION TO DISTRICT COURT IS FILED WITHIN 30 days** of the date of the Board's decision.

A **REHEARING REQUEST** shall state the specific grounds and relief sought. If the rehearing request is denied, a petition may be filed in **DISTRICT COURT** within **30 days** of the date of the denial.

SECTION: 96.5-1

DECISION

UNEMPLOYMENT BENEFITS ARE DENIED

The Claimant appealed this case to the Employment Appeal Board. Two members of the Employment Appeal Board reviewed the entire record. Those members are not in agreement. Monique F. Kuester would affirm and John A. Peno would reverse the decision of the administrative law judge.

Since there is not agreement, the decision of the administrative law judge is affirmed by operation of law. The Findings of Fact and Reasoning and Conclusions of Law of the administrative law judge are adopted by the Board and that decision is **AFFIRMED** by operation of law. See, 486 IAC 3.3(3).

Monique F. Kuester

DISSENTING OPINION OF JOHN A. PENO:

I respectfully dissent from the decision of the Employment Appeal Board; I would reverse the decision of the administrative law judge. I agree that the Claimant voluntarily quit his employment. He quit because the Employer continually expected him to haul overweight loads, which the Claimant believed was illegal, and of which the record supports the Employer had knowledge. (Tr. 7, lines 16-23) The court in *O'Brien v. Employment Appeal Board*, 494 N.W.2d 660 (Iowa 1993) held that the Claimant need not prove that the Employer's actions that triggered the quit were, in fact, illegal. Rather, the court used the reasonable person standard, which indicates if a reasonable person would believe the Employer's actions were illegal, then there is good cause to quit.

The Employer's knowledge and essentially cavalier attitude that the Claimant should have said something weighed heavily in my decision. The Claimant should not be expected to carry illegal loads under any circumstance. Based on this record, I would conclude that the Claimant worked under detrimental and intolerable working conditions which further justified his quit as being with good cause attributable to the Employer. For these reasons, I would allow benefits provided the Claimant is otherwise eligible.

John A. Peno

AMG/fnv